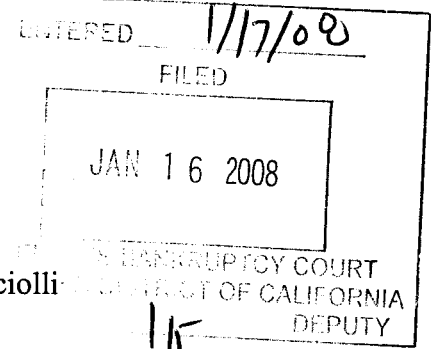


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7 Attorneys for Creditors/Landlords, James Giaciolli and Blacida Giaciolli
8
9

10 **UNITED STATES BANKRUPTCY COURT**
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 In re
13 CREATIVE CAPITAL LEASING
14 GROUP, LLC, a California limited liability
15 company,
16
17 Debtor-in-Possession.

Case No. 07-04977-PB11
Chapter: 11

18 **STIPULATION AND AGREED**
19 **ORDER FOR ASSUMPTION OF**
20 **LEASE OF NONRESIDENTIAL**
21 **REAL PROPERTY**

22 This Stipulation and Agreed Order for Assumption of Lease of Nonresidential Real Property
23 (the "Stipulation") is made and entered into this 31st day of December 2007, by and between
24 Creative Capital Leasing Group, LLC, the chapter 11 debtor and debtor-in-possession herein (the
25 "Debtor") and James and Blacida Giaciolli (the "Giaciolli" and, collectively with the Debtor, the
26 "Parties").

27 **RECITALS**

28 A. On September 10, 2007 (the "Petition Date"), Debtor commenced the above-
captioned chapter 11 case (the "Chapter 11 Case") by filing a voluntary petition for relief under
Chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States
Bankruptcy Court for the Southern Central District of California (the "Bankruptcy Court"). Debtor
continues to operate its business and manage its properties as a debtor-in-possession pursuant to
Bankruptcy Code sections 1101 and 1108.

B. In particular, Debtor is a lessee and the Giaciolli the lessors of that certain
nonresidential real property located at 6354-6390 El Cajon Blvd., San Diego, California 92115 ("El

1 Cajon Property”) pursuant to the terms of the Lease Agreement dated October 13, 1969, and
2 modified thereafter by multiple amendments and assignments (the Lease Agreement and all
3 modifications are hereinafter collectively referred to as the “Lease”).

4 C. The term of the Lease runs through October 1, 2024.

5 D. Debtor is presently operating the El Cajon Property on a cash flow positive basis, and
6 it is in the best interest of the Debtor to assume the Lease.

7 E. Both the Debtor and the Giaciollis have agreed to the Debtor’s assumption of the
8 Lease pursuant to the terms articulated in this Stipulation.

9 NOW, THEREFORE, based upon the foregoing recitals, it is hereby stipulated and agreed,
10 by and among the Parties by their respective undersigned counsel, subject only to this Court’s
11 approval, as follows:

12 1. The Debtor shall assume the Lease subject to all terms and conditions contained
13 therein, in addition to a one-time default payment from Debtor to the Giaciollis in the amount of
14 \$12,244.88 (“Default Payment”), at which point the Lease payments will be brought up to date
15 (assuming that any monthly lease payments due between the date of filing and entry of this
16 Stipulation have been made in accordance with the Lease). The Default Payment shall be made by
17 Debtor to the Giaciollis within fifteen (15) days of entry of this Stipulation.

18 2. This Stipulation shall be effective immediately upon entry by the Court.

19 3. Counterparts. This Stipulation may be signed in any number of counterparts, each of
20 which shall be an original, with the same effect as if the signatures thereto were upon the same
21 instrument. This Stipulation may be executed by the facsimile delivery of signature pages.

22 4. Enforceability. The terms and conditions of this Stipulation have been negotiated by
23 the Parties at arms’ length and in good faith and are fair and reasonable under the circumstances, and
24 this Stipulation shall be enforceable against the Parties in accordance with its terms. This Stipulation
25 shall be binding upon and shall insure to the benefit of the Parties hereto and their successors in
26 interest.

27 5. Each party represents and warrants that it has had an opportunity to fully review the
28 provisions of this Stipulation with attorneys of its own choice as a result of which the parties hereto

1 acknowledge and agree (a) that any rule of law that provides that ambiguities are to be construed
2 against the drafting party shall not be employed in the interpretation of this Stipulation, (b) that each
3 of the undersigned has the authority to execute this Stipulation, and (c) that each party signing this
4 Stipulation is entering into this Stipulation knowingly, voluntarily and of its own free will.

5 6. This Court retains jurisdiction to enforce or adjudicate any disputes arising under all
6 or any part of this Stipulation.

7 IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed
8 by their respective authorized signatories.

9 Dated: January 15, 2008

HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP

11 By: 

Joshua A. Sonné
Attorneys for Creditors/Landlords
James Giaciolli and Blacida Giaciolli

14 Dated: January 15, 2008

SMAHA LAW GROUP

16 By: 

Gustavo Bravo
Attorneys for Debtor and Debtor-in-Possession
Creative Capital Leasing Group, LLC

ORDER

21 **IT IS SO ORDERED.**

22 Dated: JAN 16 2008



Peter W. Bowie
Judge of the United States Bankruptcy Court

28 339770_1

U.S. BANKRUPTCY COURT SOUTHERN DISTRICT OF CALIFORNIA		COURT USE ONLY
TITLE OF CASE (ABBREVIATED) James Giaciolli and Blacida Giaciolli v. Creative Capital Leasing Group, LLC		
ATTORNEY OR PARTY WITHOUT ATTORNEY (NAME AND ADDRESS): Joshua A. Sonn� (SBN 229673)		
TELEPHONE NO.: Tel. (619) 239-3444 Fax: (619) 232-6828		
HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP 600 WEST BROADWAY, EIGHTH FLOOR SAN DIEGO, CALIFORNIA 92101		
ATTORNEYS FOR: James Giaciolli and Blacida Giaciolli	HEARING DATE - TIME	CASE NUMBER: 07-04977

PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to this action. My business address is **HECHT SOLBERG ROBINSON GOLDBERG & BAGLEY LLP**, 600 West Broadway, Eighth Floor, San Diego, CA 92101.

On January 15, 2008, I served the following documents:

1. **STIPULATION AND AGREED ORDER FOR ASSUMPTION OF LEASE OF NONRESIDENTIAL PROPERTY**

I served the documents on the person below, as follows:

Gustavo Bravo
Smaha Law Group
7860 Mission Center Court,
Suite 100
San Diego, CA 92108

Mary Testerman Duvoisin
Office of the US Trustee
402 West Broadway, Suite 600
San Diego, CA 92101

Tiffany L. Carroll
Office of the US Trustee
402 West Broadway, Suite 600
San Diego, CA 92101

- ☐ **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed above. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.
- ☒ **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses above and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- ☐ **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- ☐ **By e-mail or electronic transmission.** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on January 15, 2008, at San Diego, California.


Susan Fuller